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The Liquidation of German-American Claims

THE liquidation of war claims of American citizens against Germany, amounting roughly to \$250,000,000, and the return to German nationals of property to the value of more than \$300,000,000, are proposed by two bills now pending in Congress. Although differing in method and detail, both the Mills bill (H. R. 10820) and the Newton bill (H. R. 12174) provide for the complete liquidation of the claims of nationals of both countries. If either of these bills is passed it will have the effect of closing the ledger of war-claims accounts between the United States and Germany and of paying to their respective nationals claims which have in many cases been held since the early years of the war.

Numerous other bills have been introduced, both in this and in the last session of Congress, providing for a partial payment of the war claims, or for the return of the property of German nationals, but until the present time no comprehensive plan has been suggested for dealing with the problem as a whole. This is largely

due to the complex nature of the problem itself, and to the difficulties to be overcome in establishing claims, making awards, and in determining Germany's capacity to pay.

DELAY IN SETTLING TERMS

Under the theory of the Joint Resolution of July 2, 1921 and the Treaty of Berlin of August 25, 1921, German property was retained as security for the payment of the American claims. Consequently it was exceedingly difficult, if not impossible, to proceed with any plan for the payment of claims before determining the amount of the German obligations and before making some arrangement for their payment up to the limit of Germany's capacity. Both of these dispositions have now been accomplished, in so far as is possible, by the awards of the Mixed Claims Commission and by the terms of the Paris Agreement, whereby the United States shares in the annual payments under the Dawes Plan.

CLAIMS AND COUNTER CLAIMS

The first step toward an understanding of the problem is a consideration of the nature of the claims. The American claims against Germany fall under two general categories:

1. Claims on the part of the United States and its nationals for damages due to the loss of life and property sustained during the period of American neutrality between August 6, 1914, and April 6, 1917. These claims arise chiefly as a result of the German submarine warfare.
2. Claims on the part of the United States and its nationals for damages to property which was sequestered by the German government and subsequently returned to the American owners at a loss in value.

The German claims may likewise be put in two general categories:

1. Claims on the part of German nationals for the return of property which was sequestered by the United States during the war. This property is still in the hands of the Alien Property Custodian of the United States.
2. Claims on the part of German nationals for compensation for German ships, radio stations, patents and inventions, which were seized under orders of the President at the time of the declaration of war. Most of this property has been disposed of to private American owners.

THE AMERICAN CLAIMS

Under the provisions of the Treaty of Versailles, the United States, as one of the principal Allied and Associated Powers, is legally entitled to share in all the reparations and advantages stipulated in that instrument. By the terms of the Treaty, Germany and her allies were forced to accept "responsibility for causing all the loss and damage" which the Allied and Associated Governments and their nationals had suffered as a result of the war. In carrying out the hard logic of this declaration, the Treaty provided not only for reparations up to the extreme limit of Ger-

many's capacity, but also included a long list of damages under which the Allied and Associated Governments were permitted to claim compensation. Those items under which the United States might have occasion to press claims for damages are contained in paragraphs 5 to 7 of Annex I of Article 244:

- "(5) As damage caused to the peoples of the Allied and Associated Powers, all pensions and compensation in the nature of pensions to naval and military victims of war (including members of the air force), whether mutilated, wounded, sick or invalided, and to the dependents of such victims, the amount due to the Allied and Associated Governments being calculated for each of them as being the capitalised cost of such pensions and compensation at the date of the coming into force of the present Treaty on the basis of the scales in force in France at such date.
- "(6) The cost of assistance by the Governments of the Allied and Associated Powers to prisoners of war and to their families and dependents.
- "(7) Allowances by the Governments of the Allied and Associated Powers to the families and dependents of mobilised persons or persons serving with the forces, the amount due to them for each calendar year in which hostilities occurred being calculated for each Government on the basis of the average scale for such payments in force in France during that year."

AMERICAN RIGHTS UNDER JOINT RESOLUTION

The Joint Resolution of Congress of July 2, 1921, which brought to an end the legal state of war existing between the United States and Germany, although repudiating that part of the Treaty of Versailles containing the League of Nations Covenant, claimed all the rights and privileges as one of the Allied and Associated Powers. Section 2 of the Resolution declared:

"That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the Treaty

of Versailles, have been stipulated for its or their benefit; or to which it is entitled as one of the principal Allied and Associated Powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise."

The Joint Resolution also declared that all property of the German government and its nationals which had come into the possession of the United States would be retained until suitable provision had been made by Germany for the satisfaction of all claims of the United States and its citizens.

AMERICAN RIGHTS UNDER BERLIN TREATY

The Treaty of Berlin of August 25, 1921, which concluded the separate peace between the United States and Germany, restated Germany's obligations to the United States in the same terms as those of the Joint Resolution. The United States asserted its legal claim to share in all the damages and reparations demanded of Germany by the Treaty of Versailles and also reserved to itself the privilege of taking part in the work of the Reparations Commission provided it elected to do so. Article I of the Treaty reads in part as follows:

"Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations or advantages specified in the aforesaid Joint Resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such Treaty has not been ratified by the United States."

THE MIXED CLAIMS COMMISSION

The first realistic step taken toward the settlement of the American claims was the creation of a Mixed Claims Commission to determine the amount to be paid by Germany in satisfaction of American claims. This Commission was established under the terms of an agreement concluded between the United States and Germany on the 10th of August, 1922. The Commission was authorized to hear claims and to make awards which it was agreed would be accepted as "final and binding upon the

two governments." The Commission was authorized to pass upon the following categories of claims:

"(1) Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights and interests, including any company or association in which they are interested, within German territory as it existed on August 1, 1914;

"(2) Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to persons, or to property, rights and interests, including any company or association in which American nationals are interested, since July 31, 1924, as a consequence of the war;

"(3) Debts owing to American citizens by the German government or by German nationals."

MODERATE INTERPRETATION OF AMERICAN RIGHTS

Although the agreement did not make clear the extent to which the United States would press its claims under the Treaty of Versailles, an exchange of notes between Chancellor Wirth and Ambassador Houghton satisfied the German government that the more extreme claims stipulated in the Treaty of Versailles would not be presented. Ambassador Houghton in his note to the German Chancellor said:

"In accordance with the instructions that I have received from my Government, I am authorized by the President to state that he has no intention of pressing against Germany or of presenting to the Commission established under the claims agreement any claims not covered by the Treaty of August 25, 1921, or any claims falling within Paragraphs 5 to 7, inclusive, of the annex following Article 244 of the Treaty of Versailles."

An interesting example of the spirit that animated the negotiations for the creation of the Mixed Claims Commission is provided by the incident of the appointment of the umpire of the Commission. The agreement provided that the government

of the United States and the government of Germany should each appoint one Commissioner and that "the two governments shall by agreement select an umpire to decide upon any cases concerning which the Commissioners may disagree." After the two Commissioners had been appointed, the German Chancellor asked President Harding to appoint the umpire. The President responded by appointing Mr. Justice William R. Day. The other members of the Commission were Dr. Wilhelm Kiesselbach, representing Germany, and Mr. Edwin B. Parker, representing the United States. On the 14th of May, 1924, Mr. Justice Day resigned as umpire to the Commission and Commissioner Parker was appointed to succeed him. Mr. Chandler V. Anderson was appointed by the President on June 15 to succeed Judge Parker as Commissioner.

The first meeting of the Commission was held in the diplomatic room of the Department of State in Washington on October 9, 1922. In accordance with the terms of the agreement it was announced that all claims in order to be considered must be presented within six months of the date of the first meeting. Twelve thousand four hundred and sixteen claims were filed within the time limit set and the Commission has been engaged in almost continuous session since that time in hearing these claims and in making awards. At present there remain on the docket only about nine hundred claims which are still to be considered and it is anticipated that the work of the Commission will soon be completed.

The awards of the Mixed Claims Commission which Germany is obligated to pay will aggregate approximately \$190,000,000 of principal and \$60,000,000 of accrued interest to January 1, 1926, or a total of \$250,000,000. Only about \$60,000,000 of the total has been awarded to the United States government, the remainder of \$190,000,000 represents awards to American nationals. The awards bear interest at the rate of five per cent.

THE GERMAN CLAIMS

The other side of the German-American claims problem is involved in the question of the disposition of the property of Ger-

man nationals, which is now being held by the Alien Property Custodian. On the same day that Congress declared war against Germany, all German ships lying in American harbors and all German radio stations were seized by order of the President. On October 6, 1917, Congress passed the Trading with the Enemy Act under the provisions of which all Alien Enemy Property within the borders of the United States was seized and placed under the charge of an official to be known as the Alien Property Custodian. The Act of 1917 vested in the Custodian "all the powers of a common-law trustee in respect of the property seized" and empowered him to receive "all money and property in the United States due and belonging to an enemy. . . . which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act, and to hold, administer, and account for the same under the general direction of the President and as provided in this Act."

AMOUNT OF GERMAN LOSSES

The amount of property seized under the Trading with the Enemy Act is estimated at about \$300,000,000, of which more than ninety per cent belonged to citizens of Germany. This property has been held in the form of a number of separate trust funds. There have been some 38,000 of such trusts on the books of the Alien Property Custodian since that office was established. At the present time the amount of property held by the Alien Property Custodian is estimated at \$218,000,000. This does not include the value of the ships and radio stations which were taken over directly by the President to be used for war purposes and later sold to private owners or retained in use by the government itself. Neither does it include the full value of certain patents and inventions for which German citizens are pressing their claims.

Prior to March 4, 1923, no interest was paid on the earnings of the trust funds which were deposited with the Treasury. Under the operation of the Winslow Act, which in the form of an amendment to

the Trading with the Enemy Act became effective on March 4, 1923, interest will be paid to the owner of the property on all funds deposited with the Treasury. Under the operation of the same Act, a part of the property was returned under a section of the law which permitted the return to its owners of all property in the separate funds up to \$10,000 in value. This has eliminated a good many of the smaller trusts and has cut down considerably the amount of property held by the Alien Property Custodian.

PAYMENTS TO AMERICA UNDER DAWES PLAN

With the work of the Mixed Claims Commission nearing completion and the total amount of Germany's obligations to the United States about to be determined, the only obstacle that remains to the complete liquidation of the claims of both countries is the provision of funds for the payment of the awards of the Mixed Claims Commission. If funds could be provided for the payment of the American claims, the German property which has been held as security under the Resolution of July 2, 1921, could be released to its German owners. In theory the money for the payment of the American claims is to come from Germany, but Germany is practically in a condition of bankruptcy and the United States is only one of a number of its creditors. The obligation of Germany to pay the American claims is the same as her obligation to pay reparations to the other allied nations and the only payments that the United States can therefore properly expect must come out of the Dawes annuities.

The total amount of reparations required of Germany by the Reparations Commission amounted to one hundred and thirty-two billion gold marks, in addition to the sum of the Belgian war debt of about five billion gold marks. It soon became obvious that this was beyond Germany's capacity and under the Dawes Plan the maximum payments were fixed at 2,500 million gold marks each year. The United States, in order to receive anything in satisfaction of its claims, had to obtain a share in the Dawes annuities. The United States

presented two bills as a charge against the reparation payments; the first was for the expenses of the army of occupation, amounting to \$250,000,000, and the second was the bill for the payment of the awards of the Mixed Claims Commission. Accordingly, under the terms of the Paris agreement which apportioned the Dawes annuities to the various countries, the share of the United States in repayment of the costs of the army of occupation was fixed at 55,000,000 gold marks a year (\$12,000,000). The share of the United States on account of the awards of the Mixed Claims Commission was fixed at "two and one-half per cent of all receipts from Germany on account of the Dawes annuities available for distribution as reparations, providing that the annuity resulting from this percentage shall not in any year exceed 45,000,000 gold marks" (about \$11,000,000).

INADEQUACY OF DAWES ANNUITIES

If we assume perfect operation of the Dawes Plan — which is a questionable assumption — there will be only \$11,000,000 a year available for the payment of claims to the amount of \$250,000,000. Under-Secretary Winston of the Treasury Department, in a statement issued to the press on March 29, makes clear the difficulties of payment of mixed claims under the Dawes annuities. His statement follows in part:

"It is estimated that all the awards of the Mixed Claims Commission which Germany is obligated to pay will aggregate \$190,000,000 of principal and \$60,000,000 of accrued interest to January 1, 1926, or a total of \$250,000,000. The awards bear 5 per cent interest. If no interest is to be paid upon accumulated interest, an annuity of \$11,000,000 would pay current interest and pay the \$60,000,000 accumulated interest in forty years, and thereafter, in forty more years, would amortize the principal of the awards—a total period of eighty years. This is on the assumption that the Dawes Plan continues for that length of time and that each year Germany is able to pay to the Transfer Agent in Germany and the Transfer Agent is able to transfer into the currencies of the creditor nations 2,500,000,000 gold marks per year. While our Army costs repayments are preferred, the Mixed Claims belong in the general

category of reparations without preference and any diminution in total payments will be felt by the Mixed Claims.

"If the Dawes plan fails and the United States resorts to its rights to demand payment of the Mixed Claims under the Berlin Treaty, the Allies would seem to have a like right to ask payment of the 132 million gold marks of reparations, plus 5 per cent per annum interest. This yearly interest alone is two and one-half times the total Dawes annuities. It seems impractical, therefore, to expect from Germany payment of the Mixed Claims except out of the two and one-half per cent annuity under the Dawes plan. While the annuity given the United States under the Paris agreement is a fair proportion of the total demands on Germany by all her creditors, still, in view of the length of time it will take for this annuity to pay the Mixed Claims, it must be recognized that the awards have little present value to the private American citizen unless some other means of immediate payment can be obtained."

BILLS BEFORE CONGRESS

The Mills bill and the Newton bill, although substantially the same in every other respect, present two different plans for the payment of the awards of the Mixed Claims Commission. The Mills bill (H. R. 10820) was prepared under the supervision of the Treasury Department and introduced in the House of Representatives on March 29, 1926, by Representative Ogden L. Mills of New York. Hearings on the bill have been held throughout April and the early part of May before a subcommittee of the Committee on Ways and Means sitting in conjunction with a subcommittee of the Committee on Interstate and Foreign Commerce. The Newton bill (H. R. 11894) was introduced in the House of Representatives for the first time on May 4, 1926, and referred to the Committee on Ways and Means. On May 14, Representative Newton introduced a different bill (H. R. 12174) which was referred to the Committee on Ways and Means.* Representative Newton is from

Missouri and is the author of several resolutions asking for the return of the German property. No hearings have yet been held on the Newton bill.

THE MILLS BILL

An analysis of the essential provisions of the Mills bill follows:

1. The Secretary of State is instructed to certify to the Secretary of Treasury the awards of the Mixed Claims Commission, and the Secretary of Treasury is directed to pay the amount of each award within five years after the date of the enactment of the Act.

2. There shall be appointed in the Department of State a German Claims Arbitrator at a salary not to exceed \$15,000 a year. The arbitrator is instructed to hear the claims of any German national and to determine the fair compensation to be paid by the United States with respect to claims on account of any vessel, radio station, patent or invention seized by the United States during the war. Compensation is to be awarded by the arbitrator in the case of radio stations, patents and inventions upon the basis of the value of the property if sold to the United States by one of its citizens at the time of seizure. Compensation for vessels shall be awarded on the basis of the value of the vessel at the time it was seized, taking into consideration the fact that the owner could not use or permit the use of the vessel. The total cost to the United States under this section is limited to \$100,000,000 and if the aggregate amount of the tentative awards exceeds this amount, the arbitrator must "proportionately reduce the amount of each tentative award."

3. The Secretary of the Treasury is instructed "if he deems it advisable" to exercise the authority granted by the various Liberty Bond Acts and the Victory

*A third bill (H. R. 12,643) was introduced on June 4 by Representative Green of Iowa, Chairman of the House Committee on Ways and Means. The Green bill is substantially the same as the Mills bill and the Newton bill with respect to the return of the German property. With respect to the American claims, however, the Green bill goes even beyond the Newton bill in refusing to accept full responsibility on the part of the United States for the payment of the awards of the Mixed Claims Commission. The Green bill provides that a special deposit account shall be created by the Treasury out of which payments shall be made to American

claimants. This deposit account shall be made up of funds not to exceed \$25,000,000 in the aggregate, in addition to the interest or other earnings accruing from its reinvestment. This is to be paid into the deposit account out of the earnings on the alien property invested with the Treasury prior to March 4, 1923. The Treasury is authorized to pay only awards in the following two classes:

1. The amount of the awards on account of death or personal injury.
2. The amount of each award for other than personal injury up to the value of \$50,000.

The net effect of the Green bill would be to cancel outright all of the larger American claims.

Liberty Loan Act "to issue bonds, notes and certificates of indebtedness of the United States" for the purpose of paying the awards of the Mixed Claims Commission and those of the German Claims arbiter.

4. The Secretary of the Treasury is instructed to apply to the payment of the awards of the German Claims Arbiter and those of the Mixed Claims Commission the total amount of the payments received from Germany under the Dawes Plan. This includes the annuities on account of the expenses of the United States Army of Occupation as well as those in payment of the American claims.

5. The Alien Property Custodian is directed to return to the proper persons practically all the property held in trust for such persons along with accrued earnings and interest collected after March 4, 1923. He is also instructed to pay "upon application therefor prior to the expiration of one year from the enactment of the Settlement of the War Claims Act of 1926, to any citizen of the United States whose money or property was paid to the Alien Property Custodian or seized by him, interest on the amount of such money" at the rate of four per cent.

THE NEWTON BILL

The Newton bill differs from the Mills bill in one important respect. Instead of providing, as in the Mills bill, that the United States assume outright the full responsibility for the payment of the American claims, it makes the payment of the awards contingent upon the amount of money received from Germany under the Dawes Plan. An analysis of the financial provisions of the Newton bill follows:

1. The Secretary of State is instructed to certify to the Secretary of Treasury the awards of the Mixed Claims Commission. The Secretary of Treasury is authorized to pay these awards out of a special deposit account created by the Act. The special deposit account is to be made up of all payments received from Germany under the Dawes Plan, including payments made on account of the cost of the United States Army of Occupation

as well as those received on account of the American Claims. It is also to include all interest earned by the Treasury through the investment of the German property prior to March 4, 1923.

2. The Secretary of Treasury is instructed to pay the awards certified to him according to the following plan:

- (a) All awards on account of death or personal injury are to be paid first.
- (b) The awards not exceeding \$25,000 to be paid secondly.
- (c) The payment of \$25,000 on all awards above that amount is the third charge on the resources of the special deposit account.
- (d) The allocation pro rata of all the funds remaining in the deposit account to the payment of all remaining claims and the issuance of American Claims Special Participating Certificates in payment or in satisfaction of the amounts left unpaid. These certificates shall not bear interest and the United States assumes no liability for their payment. They constitute a charge, however, on any funds which may in the future be paid into the deposit account under the Dawes annuities.

4. No interest will be paid on the American awards after the date of the passage of the Act.

5. The Secretary of the Treasury is authorized to issue securities under the authority of the various Liberty Loan Acts, up to the amount of \$100,000,000 for the payment of the awards of the German Claims Arbiter.

FINANCIAL PLAN OF PENDING BILLS

The issue presented by the two bills is the extent to which the United States shall assume responsibility to its citizens for payment of the claims against Germany. According to the terms of the Mills bill, this responsibility is full and complete. If the Mills bill is passed, the United States will proceed immediately to the payment of the full amount of the awards of the Mixed Claims Commission, irrespective of the Dawes payments. If

the Newton bill is passed, payment of the claims will be contingent upon the amount of funds available for distribution in the special deposit account.

At the present time, there is approximately \$36,000,000 which has been collected in the form of interest upon the earnings of the German property previous to March 4, 1923, which would be turned into the special deposit account. To this may be added the annual payments from Germany. Assuming that Germany is able to meet in full the payments provided for in the Paris agreement, the United States will receive from this source \$23,000,000 a year on account of the expenses of the Army of Occupation and in partial payment of the American claims. If Germany is unable to meet her payments in full, the United States will probably receive only the \$12,000,000 allowed for the expenses of the United States Army of Occupation, which is a first charge upon Germany's resources. Under the most favorable conditions to be imagined, therefore, the resources of the special deposit account, which would be available for distribution to American claimants, would amount to only \$59,000,000 in the first year of its operation. Thereafter, this amount would be even smaller. It could not, at the most, amount to more than \$23,000,000 a year in addition to whatever earnings accrue through the investment of the funds belonging to the deposit account. These sums would perhaps be sufficient to pay in full all of the awards on account of loss of life or personal injury and all other claims up to the amount of \$25,000 but the larger claims would doubtless be heavily discounted.

DEFENSE OF PENDING BILLS

The arguments of the proponents of the Newton Bill are based upon what they consider to be the injustice of paying the private losses due to the war out of public funds. The logic of their position is that such property losses are a part of the risks of investing or engaging in business outside of the United States, and that while the United States should do all in its power

to insist upon the payment of these claims up to the limit of Germany's capacity, it should not assume the obligation to pay out of the funds raised by taxation the amount that Germany is unable to pay.

The proponents of the Mills bill point to the incongruity of a situation in which the United States would pay the claims of German citizens while the claims of American citizens would be discounted at a heavy sacrifice. In justice to their own citizens, so they argue, it is only fair for the United States to assume the amount of the obligation that Germany is unable to pay. This is especially true, it is urged, in view of the fact that the return of the German property takes away the security for the American claims.

PROPOSED CONFISCATION

It has frequently been suggested that the United States confiscate the German property in order to pay the American claims or that it continue to hold the German property as security until American claims have been fully satisfied. One of the chief arguments for this procedure is taken from the example of other countries. Practically every country that has been faced with the same problem has liquidated the alien property by first paying the claims of its own nationals and returning what is left to alien claimants. The New York *Herald-Tribune* for Monday, April 12, 1926, is the spokesman for this point of view in an editorial entitled "Alien Property Confusions." The editorial says:

"The status of this property has been fixed by international action under the Versailles Treaty. The allied powers which had seized German private property were authorized to dispose of it and charge the proceeds against the German settlement account. Germany approved that transfer and assumed the obligation to compensate her nationals. We incorporated in our separate treaty with Germany all the financial clauses covering our rights to the assets in the Alien Property Custodian's hands. So far as Germany herself or the former individual owners of these assets are concerned, our competency to apply these holdings to pay adjusted American claims against the Reich is beyond dispute. These funds represent in an international sense a cash settlement already made in our favor by Berlin.

"The treaty record is clear. Secretary Hughes stated it in his letter of July 26, 1922, to Representative Winslow, warning the House of Representatives against any legislation which might impair the alien property security held against the discharge of American claims. In his recent statement to the House Committees on Ways and Means and Interstate and Foreign Commerce, Mr. Winston, supporting the Mills bill to restore this property to its ex-owners, said:

"It might be within the power of the United States under these provisions of the Versailles Treaty, to the benefit of which the United States is entitled under the Berlin Treaty, to liquidate the private German property and to apply the proceeds to the payment of the mixed claims."

"Why 'might be'? So far as our international engagements go, the power is hardly problematical. Other allied governments have exercised it, and in so doing have been within their sovereign rights."

The arguments against the confiscation or retention of the German property are based upon considerations both of ethics and of economic self-interest. Secretary Mellon, in a press release on Monday, April 19, 1926, states the administration viewpoint as follows:

"I believe that the question must be decided on broad grounds of national policy. To confiscate the private property of enemy citizens is inconsistent with the historical American policy, is detrimental to our own citizens who now have, or will make, large investments abroad where similar confiscation might be adopted, and is above all wrong in morals. I can see no justification for the adoption of such a course."

Under-Secretary Winston of the Treasury Department, in a press release on April 3, 1926, based his objections to the confiscation of the German property for the payment of American claimants upon legal considerations as well as upon the basis of economic expediency. His statement follows in part:

"Looking at the matter from the standpoint of a great commercial nation whose citizens now have enormous investments in foreign countries, it would appear sound policy for us to continue as we have in the past to recognize the sanctity of private property of other nationals. By such a policy the property of our nationals abroad may be saved from confiscation in the event of another war. Aside from the moral and commercial policy questions affecting the confiscation of the enemy property, doubt is raised by the Berlin treaty and the resolutions of

Congress as to our legal authority to liquidate the property to pay the mixed claims. It is provided that the enemy property 'shall be retained by the United States . . . until such time as the Imperial German Government . . . shall have . . . made suitable provision for the satisfaction of the mixed claims of our nationals.' If the provision for a share in the Dawes annuities is a suitable provision, then the property ought to be returned. If it is not a suitable provision, then our right would seem to be to hold the property until the mixed claims are paid—at least 80 years, and most likely indefinitely. To keep property away from its owners and hold it in the hands of a government trustee is a great economic loss. It is a vain thing, indeed, to insist on retaining title to property not our own indefinitely. Matters between nations should be settled and not permitted to be for many generations a source of friction."

AMERICAN TREATY OBLIGATIONS

In addition to considerations of national policy, it is urged that the United States is bound by treaty to return the German property. Benjamin Franklin, John Adams and Thomas Jefferson were the representatives of the United States in the negotiation of a treaty with Prussia in 1785, which was renewed in 1799 and again in 1828. Whether this treaty is binding upon the United States and the present government of Germany is questionable, but it has never been repudiated by either government. Articles 23 and 24 of the Prussian Treaty read as follows:

"Article 23. If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs and may depart freely, carrying off all their effects without molestation or hindrance, and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments and shall not be molested in their persons nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

"Article 24. It is declared that neither the

pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article, but, on the contrary, a state

of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and nations."

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